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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 160

(By Senator WOOTEN, ET AL)



PASSED MARCH 9, 1995
In Effect 90 DAYS FROM Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 160

(SENATORS WOOTON, WALKER, BOLEY, JACKSON, ANDERSON,
PLYMALE, SCHOONOVER
AND MANCHIN, *original sponsors*)

[Passed March 9, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the waiver of the notification requirement to foster parents and adoptive parents in cases involving afterborn siblings.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-14. Criteria and procedure for removal of child from foster home; notice of child's availability for placement; limitations.

1 (a) The state department may temporarily remove a
2 child from a foster home based on an allegation of abuse
3 or neglect, including sexual abuse, that occurred while
4 the child resided in the home. If the department
5 determines that reasonable cause exists to support the
6 allegation, the department shall remove all foster
7 children from the arrangement and preclude contact
8 between the children and the foster parents. If, after
9 investigation, the allegation is determined to be true by
10 the department or after a judicial proceeding a court
11 finds the allegation to be true or if the foster parents fail
12 to contest the allegation in writing within twenty
13 calendar days of receiving written notice of said
14 allegations, the department shall permanently terminate
15 all foster care arrangements with said foster parents:
16 *Provided*, That if the state department determines that
17 the abuse occurred due to no act or failure to act on the
18 part of the foster parents and that continuation of the
19 foster care arrangement is in the best interests of the
20 child, the department may, in its discretion, elect not to
21 terminate the foster care arrangement or arrangements.

22 (b) When a child has been placed in a foster care
23 arrangement for a period in excess of eighteen con-
24 secutive months and the state department determines
25 that the placement is a fit and proper place for the child
26 to reside, the foster care arrangement may not be
27 terminated unless such termination is in the best interest
28 of the child and:

29 (1) The foster care arrangement is terminated pursuant
30 to subsection (a) of this section;

31 (2) The foster care arrangement is terminated due to
32 the child being returned to his or her parent or parents;

33 (3) The foster care arrangement is terminated due to
34 the child being united or reunited with a sibling or
35 siblings;

36 (4) The foster parent or parents agree to the

37 termination in writing;

38 (5) The foster care arrangement is terminated at the
39 written request of a foster child who has attained the age
40 of fourteen; or

41 (6) A circuit court orders the termination upon a
42 finding that the state department has developed a more
43 suitable long-term placement for the child upon hearing
44 evidence in a proceeding brought by the department
45 seeking removal and transfer.

46 (c) When a child has been residing in a foster home for
47 a period in excess of six consecutive months in total and
48 for a period in excess of thirty days after the parental
49 rights of the child's biological parents have been
50 terminated and the foster parents have not made an
51 application to the department to establish an intent to
52 adopt the child, the state department may terminate the
53 foster care arrangement if another, more beneficial,
54 long-term placement of the child is developed: *Provided*,
55 That if the child is twelve years of age or older, the child
56 shall be provided the option of remaining in the existing
57 foster care arrangement if the child so desires and if
58 continuation of the existing arrangement is in the best
59 interest of the child.


60 (d) When a child is placed into foster care or becomes
61 eligible for adoption and a sibling or siblings have
62 previously been placed in foster care or have been
63 adopted, the department shall notify the foster parents
64 or adoptive parents of the previously placed or adopted
65 sibling or siblings of the child's availability for foster
66 care placement or adoption to determine if the foster
67 parents or adoptive parents are desirous of seeking a
68 foster care arrangement or adoption of the child. Where
69 a sibling or siblings have previously been adopted, the
70 department shall also notify the adoptive parents of a
71 sibling of the child's availability for foster care
72 placement in that home and a foster care arrangement
73 entered into to place the child in the home if the

74 adoptive parents of the sibling are otherwise qualified or
75 can become qualified to enter into a foster care
76 arrangement with the department and if such
77 arrangement is in the best interests of the child:
78 *Provided*, That the department may petition the court to
79 waive notification to the foster parents or adoptive
80 parents of the child's siblings. This waiver may be
81 granted, ex parte, upon a showing of compelling
82 circumstances.

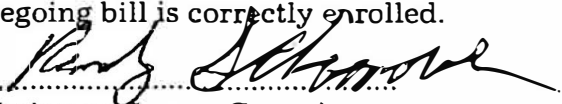
83 (e) When a child is in a foster care arrangement and is
84 residing separately from a sibling or siblings who are in
85 another foster home or who have been adopted by
86 another family and the parents with whom the placed or
87 adopted sibling or siblings reside have made application
88 to the department to establish an intent to adopt or to
89 enter into a foster care arrangement regarding a child so
90 that said child may be united or reunited with a sibling
91 or siblings, the state department shall upon a determina-
92 tion of the fitness of the persons and household seeking
93 to enter into a foster care arrangement or seek an
94 adoption which would unite or reunite siblings, and if
95 termination and new placement are in the best interests
96 of the children, terminate the foster care arrangement
97 and place the child in the household with the sibling or
98 siblings: *Provided*, That if the department is of the
99 opinion based upon available evidence that residing in
100 the same home would have a harmful physical, mental or
101 psychological effect on one or more of the sibling child-
102 ren or if the child has a physical or mental disability
103 which the existing foster home can better accommodate,
104 or if the department can document that the reunification
105 of the siblings would not be in the best interest of one or
106 all of the children, the state department may petition the
107 circuit court for an order allowing the separation of the
108 siblings to continue: *Provided, however*, That if the
109 child is twelve years of age or older, the state department
110 shall provide the child the option of remaining in the
111 existing foster care arrangement if remaining is in the

112 best interests of the child. In any proceeding brought by
113 the department to maintain separation of siblings, such
114 separation may be ordered only if the court determines
115 that clear and convincing evidence supports the
116 department's determination. In any proceeding brought
117 by the department seeking to maintain separation of
118 siblings, notice shall be afforded, in addition to any other
119 persons required by any provision of this code to receive
120 notice, to the persons seeking to adopt a sibling or
121 siblings of a previously placed or adopted child and said
122 persons may be parties to any such action.

123 (f) Where two or more siblings have been placed in
124 separate foster care arrangements and the foster parents
125 of the siblings have made application to the department
126 to enter into a foster care arrangement regarding the
127 sibling or siblings not in their home or where two or
128 more adoptive parents seek to adopt a sibling or siblings
129 of a child they have previously adopted, the department's
130 determination as to placing the child in a foster care
131 arrangement or in an adoptive home shall be based solely
132 upon the best interests of the siblings.



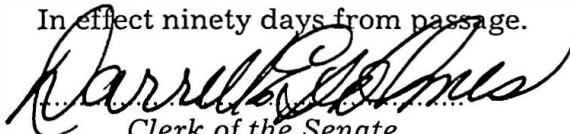
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

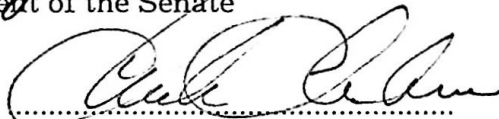
Originated in the Senate.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved..... this the 22nd.....
day of March....., 1995.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/17/95

Time 3:16 pm